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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 486

LAVEDA NOONAN,

Petitioner,

v.

NEW YORK LIFE INSURANCE CO., a corporation,

Respondent.

REBUTTAL BRIEF OF PETITIONER

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

QUESTION PRESENTED FOR REVIEW

Petitioner agrees that the rephrased question set out by respondent on page one of its brief is a part of the question of which a review is requested. However, in addition to the suicide clause ambiguity mentioned by respondent, the date from which the incontestable period began under this or a similarly worded insurance con-

tract would be in question here. Also undetermined is the question whether or not any insurance would be in force in this or a similarly worded insurance contract after completion of the insurance application but before receipt of the policy.

Petitioner, therefore, contends that the question here, paraphrasing the language of her petition, is the effect to be given to an unqualified agreement between the parties in an insurance contract application in regard to the inception of the company's contractual liability.

REBUTTAL ARGUMENT

Contract is Policy and Application

Respondent emphasizes in its brief the insurance policy involved here rather than the insurance contract, which contract would include the insurance application and the agreements expressed therein. Respondent's policy form specifically points out that the policy and the application together make up the insurance contract (Petition p. 6).

Conflicts With Other Decisions

Respondent attempts to reconcile the conflict of the instant case with the cases cited by petitioner without considering the principle enunciated in petitioner's case. Petitioner's cases give effect to the agreements set out in the only portion of the insurance contract signed by both parties—the contract application.

In the case of Mutual Life Insurance Company of New York v. Hurni Packing Co., this Court 263 U.S. 167 at 175, 44 S. Ct. 90 at 91, 68 L. Ed. 235 at 239, cited two cases which stand for this principle. These cases were briefed by petitioner in her appellee's brief and in her petition for rehearing addressed to the Court of Appeals for the Ninth Circuit. They are Anderson v. Mutual Life Insurance Co. of New York, 164 Cal. 712, 130 Pac. 726, Ann. Cas. 1914 B, 903, and Harrington v. Mutual Life Insurance Co. of New York, 21 N.D. 447, 34 L.R.A. (N.S.) 373, 131 N.W. 246.

In the Anderson case the insured suicided over a year from the policy date determined by the completion of the parts of the first insurance contract application but less than a year from the date the policy sued upon was "caused to be executed and issued." The suicide clause of the policy ran for "the period of one year after the issuance of this policy." The Supreme Court of California, finding that the parties had agreed that the contract application date was the date the risk attached under the insurance contract, gave effect to this agreement and allowed recovery of the face amount of the policy.

In the Harrington case the insurance contract application was backdated to get the benefit of a lower premium as in the instant case. The insured suicided over a year from the policy date agreed upon in the insurance contract application but less than a year from the date the policy was issued and delivered. The suicide clause in the policy ran for "the period of one year after the issuance of this policy."

One of the two issues decided by the Supreme Court of North Dakota was: "Is the defendant company liable upon a policy of insurance in case of the death of the insured by suicide in less than a year from the time of the issuance of the policy, although an artificial period of more than one year is produced because of the dating back of the policy. . . .?" The Court gave effect to the date back agreement in the insurance contract application and allowed recovery of the face amount of the policy.

In diversity cases under the doctrine of Erie R. R. Co. v. Tompkins, 304 U.S, 64, 58 S. Ct. 817, 82 L. Ed. 1188, 114 A.L.R. 1487, federal courts sitting in these two jurisdictions would be bound by these decisions. The Court of Appeals for the Ninth Circuit, in whose circuit the Anderson and Harrington cases were decided, would then find itself in opposition to the decisions of the instant case.

Furthermore, the principle of the Anderson case, supra p. 3, has been accepted by the Ninth Circuit in Schwartz v. Northern Life Insurance Co., 25 F. (2d) 555 at 557, where it cited the Anderson case.

Respondent's Cases Distinguishable

Respondent cites two cases which it claims are in conformity with the instant decision of the Court of Appeals for the Ninth Circuit. In the case of Crowley v. Travelers Insurance Co., 196 F. (2d) 315 (Respondent's brief p. 4) both the application for the insurance contract and the policy contained suicide and incontestable clauses whereas in the instant case only the policy con-

tained a suicide clause and an incontestable clause. The Court in the Crowley case could, therefore, reconcile the parts of the life insurance contract.

The case of Davis v. Fidelity Mutual Life Insurance Co., 107 F. (2d) 150 (Respondent's brief p. 5), is distinguishable on the ground that the Court's holding in that case was solely in regard to ambiguities between the terms of the policy. The agreement in the insurance contract application, material in the instant case, was not discussed by that Court.

Respondent, in its brief at the bottom of page five, places the responsibility of correlating the terms of the application and policy, in the instant case, on the insured. It need only be pointed out that where two federal courts, as well as counsel for both parties, differ as to terms of this contract, respondent should scarcely expect a layman to have more ability.

Problem of Public Importance

Your petitioner feels this problem to be a matter of considerable public interest and importance. The future education, future security, future discharge of obligation, taxwise and businesswise, depends today on the certainty of insurance contracts for many thousands of people. Petitioner in aid of maintaining consistency of interpretation in what today is an integral part of our economy and society—life insurance—asks only an opportunity to fully present this question to this Court.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

THOMAS H. RYAN

APPENDIX

Judgment

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NEW YORK LIFE INSURANCE COMPANY, a corporation, *Appellant,*	)	
vs.	)	No. 13,960
LAVEDA NOONAN, *Appellee.*	)	

APPEAL from the United States District Court for the ..... District of Oregon.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the ..... District of Oregon and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the..... judgment of the said District Court in this Cause be, and hereby is reversed.

(ENDORSED) Judgment
Filed and entered September 24, 1954,
PAUL P. O'BRIEN, Clerk.